



**STATE OF NEW JERSEY**

**FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION**

In the Matter of A.M., Department of  
Labor and Workforce Development

CSC Docket No. 2020-1585

Discrimination Appeal

**ISSUED: DECEMBER 21, 2020 (SLK)**

A.M., a Claims Examiner, Unemployment and Disability Insurance with the Department of Labor and Workforce Development, appeals the Assistant Commissioner’s determination that she violated the New Jersey State Policy Prohibiting Discrimination in the Workplace (State Policy).

By way of background, J.H., a Claims Examiner, Unemployment and Disability Insurance, alleged that in February 2018, A.M. entered her cubicle to say that she heard that J.H. had a bomb. A.M. denied the allegation and the investigation was unable to substantiate it. It was further alleged that in April 2018, J.H. wore a long black abaya and black hijab and A.M. asked whether she was going to a “funeral” and said that J.H. looked like she was “in mourning or demonic.” When J.H. objected to what A.M. said, it was alleged that A.M. responded, “Fine then I won’t say anything f\*\*\*\*\*g else.” Then it was alleged that A.M. walked by J.H.’s cubicle muttering “going to f\*\*k her up.” A.M. denied these allegations but admitted to asking J.H. about her hijab because she was curious. A.M. acknowledged that she recalled one hot summer day where she said to J.H. that what she wore made her feel even hotter. However, when she realized that she offended J.H., she apologized. The investigation revealed that on more than one occasion, J.H. complained about A.M.’s repeated questioning of her clothing. Additionally, J.H. alleged that in June 2018 while wearing an all-black abaya, J.H. heard A.M. and another respondent saying that she “looked like a ghou.” A.M. denied the statement and the investigation was unable to substantiate the allegation. Further, the investigation found that A.M. admitted that she spoke

to other colleagues, including her union shop steward, about receiving a letter informing her about the subject complaints against her. However, the letter specifically advised A.M. that she should not discuss this matter with others. Therefore, it was determined that A.M. violated the State Policy based on religion and by talking to colleagues about the complaint.

On appeal, A.M. denies that she repeatedly made comments about J.H.'s hijab and other clothing related to her religion. Instead, she asserts that there was only one time where she made a comment and it was about J.H.'s color choice. A.M. explains that it was a hot day and J.H. was wearing black and she usually wore vibrant colors or colors that coincided with the spring/summer season. A.M. acknowledges that she said that she was making her hot just by looking at her, but as soon as she saw that she offended her, she apologized, and they hugged, which she contends that J.H. accepted as she hugged her back. A.M. argues that the comments were not based on J.H.'s religion and that she would have made those comments to anyone who wore all black on a hot day. A.M. denies that she said that J.H. looks demonic as that it not her style to be mean. She believes that the investigator must have mixed up her notes and confused her with another person who J.H. accused. A.M. acknowledges that she spoke to her stop steward about the complaint. Additionally, she spoke to her assistant supervisor to tell her that she had to go upstairs for an interview as she could not disappear for an hour without her knowing where she is. A.M. explains that the assistant supervisor already knew about the accusations and she was just explaining where she was going to be and why. She also acknowledges that she spoke to someone at home about the incident because she was distraught, and she felt like her world was crashing down. A.M. asserts that her character has been unfairly defamed without proof and presents that knowingly making a false accusation about a violation of the State Policy is prohibited. She wants to know what is the process for her filing a complaint against J.H. for making false accusations against her in violation of the State Policy.

In response, the Department of Labor and Workplace Development's Equal Employment Opportunity Officer (EEO) presents that in A.M.'s signed interview statement, she admitted that she may have asked J.H. why she did not take off her hijab as compared to another co-worker who practices Islam and identifies as Muslim. Additionally, in her statement, A.M. admitted that on a hot day, she said to J.H. that her wearing a black hijab and abaya "was making her hotter." Therefore, the investigation found that A.M. made derogatory or demeaning comments about J.H.'s religious attire, in violation of the State Policy. Additionally, J.H. presented witnesses who corroborated some of her other allegations. However, as those witnesses were not able to provide a firsthand account of those other allegations, those allegations could not be substantiated.

Concerning A.M. speaking to others about the complaint, A.M. admits that she did not just notify her supervisory that she had to go for an interview due to a State

Policy investigation, instead she admits in her appeal that she discussed the nature of her appeal with her supervisor, who was also a named respondent. While it is true that A.M.'s supervisor was aware of the allegations, A.M. still had an obligation of confidentiality under the State Policy. This obligation is particularly relevant in this matter to ensure that the respondents did not engage in collusion that could impact the investigation or other behavior that could be considered retaliatory against J.H. The EEO asserts that if this conduct is permitted, such actions would have a chilling effect on the State's goal of eliminating discrimination and harassment in the workplace. Further, while A.M. had the right to speak to her shop steward or other union representative regarding any proceedings that could lead to a disciplinary action, such action would still need to be conducted with consideration to the confidentiality provisions of the State Policy to safeguard against retaliation against J.H. Further, concerning A.M.'s accusations that J.H. made false statements against her, J.H. had the right to have a complete and robust investigation and there is no evidence that J.H. made any statements that were not made in good faith. Moreover, A.M. admitted in her interview statement and on appeal that she did make the "was making her hot" comment and when she realized that she offended J.H., she apologized. The EEO asserts that an apology does not absolve one from violating the State Policy and a State Policy violation can occur even if there was no intent. Further, the EEO argues that A.M. admitting that she made some of the alleged statements bolsters J.H.'s credibility and discredits any assertion that J.H. lied during the investigation.

## CONCLUSION

*N.J.A.C. 4A:7-3.1(a)* states, in pertinent part, that the State of New Jersey is committed to providing every State employee and prospective State employee with a work environment free from prohibited discrimination or harassment. Under this policy, employment discrimination or harassment based upon religion is prohibited.

*N.J.A.C. 4A:7-3.1(b)* provides, in pertinent part, that a violation of this policy can occur even if there was no intent on the part of an individual to harass or demean another.

*N.J.A.C. 4A:7-3.1(i)* provides, in pertinent part, that an employee who knowingly makes a false accusation of prohibited discrimination/harassment or knowingly provides false information in the course of an investigation of a complain, will be subject to administrative and/or disciplinary action, up to and including termination of employment. Complaints made in good faith, however, even if found to be unsubstantiated, shall not be considered a false accusation.

*N.J.A.C. 4A:7-3.1(j)* provides that all complaints and investigation shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved. To the extent practical and appropriate under the circumstances,

confidentiality shall be maintained throughout the investigative process. In the course of an investigation, it may be necessary to discuss the claim with person(s) against whom the complaint was filed and other persons who may have relevant knowledge or who have a legitimate need to know about the matter. In order to protect the integrity of the investigation, minimize the risk of retaliation against the individuals participating in the investigative process, and protect the important privacy interests of all concerned, the EEO/AA Officer/investigator shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with others, unless there is a legitimate business reason to discuss such information.

*N.J.A.C. 4A:7.3-2(m)*4 states, in pertinent part, that the appellant shall have the burden of proof in all discrimination appeals.

Initially, it is noted that a question or a comment that references religion is not a *per se* violation of the State Policy. See *In the Matter of Louise Scrutchins* (CSC, decided February 16, 2011). See also *In the Matter of Alexandra Musson* (CSC, decided August 27, 2008). Further, potential State Policy allegations are to be evaluated based on the context of the situation. See *In the Matter of S.C.* (CSC, decided July 17, 2013).

In this matter, the EEO presents that in A.M.'s signed interview statement, she admitted that she may have asked J.H. why she did not take off her hijab as compared to another co-worker who practices Islam and identifies as Muslim. Additionally, in her statement, A.M. admitted that on a hot day, she said to J.H. that her wearing a black hijab and abaya "was making her hotter." On appeal, A.M. confirms she made the "was making her hotter" statement. While A.M. claims that this statement was only referring to J.H. wearing all black on a hot day and she would have made the comments to anyone wearing all black on that day, even if true, as the comment was concerning J.H.'s religious attire, it is reasonable to interpret it as a negative comment based on her religion, and therefore was a violation of the State Policy regardless of A.M.'s intent.

Regarding the allegation that A.M. breached her confidentiality obligation in violation of the State Policy by discussing this matter with her shop steward and her supervisor, the State Policy indicates states that "to the extent practical and appropriate under the circumstance, confidentiality shall be maintained throughout the investigative process." Further, the EEO "shall request that all persons interviewed, including witnesses, not discuss any aspect of the investigation with others, unless there is a legitimate business reason to disclose such information." In this matter, A.M. brought up the allegations to her supervisor to explain that she was going to be away for an hour to be interviewed by the EEO. Certainly, informing your supervisor that you will not be available due to State Policy investigation is a legitimate business reason and discussing with your shop steward that there are

allegations against you which could potentially lead to discipline is also a legitimate business reason. The record does not fully disclose the details of those communications. As such, the record is unclear if those communications were appropriate or if they went beyond what was necessary for legitimate business reasons. However, as the Commission has already decided that A.M. violated the State Policy as detailed above, it need not decide whether A.M.'s comments to her shop steward or supervisor violated the State Policy.

Concerning A.M.'s accusation that J.H. knowingly made false statements about her, A.M. acknowledges on appeal that she made the "was making me hotter" comment. Additionally, in her interview statement, she indicated that she asked about J.H.'s hijab because she was curious. Therefore, A.M.'s own statements lend credence to the good faith of J.H.'s allegations, even if there was insufficient evidence to substantiate all her claims. Further, A.M. has offered no evidence, such as a witness or document, to support her allegation that J.H.'s accusations were not made in good faith. As such, there is no basis to find that J.H. violated the State Policy.

### ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 16<sup>TH</sup> DAY OF DECEMBER 2020

*Deirdre L. Webster Cobb*

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